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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1[redacted]123

THE PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

ELMER W. EDMONDSON

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, AND BRIEF IN SUPPORT THEREOF.

RAY L. CHESEBRO,
DONALD M. REDWINE,
JOHN L. BLAND,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1264

THE PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

ELMER W. EDMONDSON

PETITION FOR WRIT OF CERTIORARI

To the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of the People of the State of California for a writ of certiorari directed to the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, respectfully shows to this Honorable Court:

A

Summary Statement of the Matter Involved

The case presents a question relative to a State regulatory statute affecting interstate commerce.

In the Municipal Court of the City of Los Angeles Elmer W. Edmondson was charged in the first count of a complaint with having committed a misdemeanor, to wit,

engaging in the business of a motor carrier transportation agent without a license from the Railroad Commission of the State of California, as required by Section 3 of the California Statutes of 1933, Chapter 390, Page 1011 (R. 2). Pertinent portions of the statute are printed in an appendix hereto, commencing at page 20 hereof.

The cause came on for trial and the defendant moved to dismiss said count (R. 5) on the sole ground that Section 3 of Chapter 390, Statutes of 1933, *supra*, is invalid because of being in conflict with the federal Constitution and federal statutes enacted thereunder and because the federal government now has exclusive power to regulate "travel bureaus" (R. 5, 6, 27). The motion was granted and the Municipal Court dismissed the action (R. 7). Your petitioner (plaintiff below) filed notice of appeal (R. 1) and engrossed statement no appeal (R. 9).

The cause was thereafter argued and submitted in the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, hereafter called the Appellate Department of the Superior Court.

On March 15, 1946, the Appellate Department of the Superior Court affirmed the decision of the Municipal Court (R. 15). Your petitioner filed its petition for rehearing (R. 16), which petition was denied (R. 27) as is more fully set out hereafter in petitioner's statement of jurisdiction. Thereafter your petitioner filed notice of intent to seek certiorari, and secured a stay of execution (R. 28).

Defendant's Contention

The defendant contended in the Municipal Court that his activities constituted engaging in interstate commerce, and that he was not subject to regulation by the State because of the provisions of the Interstate Commerce Act (R. 5, 6,

27). His contention was sustained in the Municipal Court and such first count of the complaint was dismissed (R. 7). Count II of the complaint, charging the violation of a different statute of the State, was dismissed at plaintiff's request (R. 5) and is not here involved.

Plaintiff contested defendant's contention at the first opportunity in the Municipal Court (R. 28). In such court and in the Appellate Department of the Superior Court the plaintiff urged that:

(1) The order of the Interstate Commerce Commission in *Ex Parte No. MC 35*, 33 Motor Carriers Cases 69, prohibited operation of casual carriers carrying passengers to whom transportation was sold by "travel bureaus," and that the Interstate Commerce Act did not provide a method of regulation of such carriers.

(2) Although "travel bureaus" may be subject to criminal prosecution under the federal laws, they are not subject to regulation under the Interstate Commerce Act for the reason that brokers under such Act can lawfully sell transportation only for carriage by certificated carriers, and that casual carriers, as such, cannot secure certificates of convenience and necessity. Any carrier who did in fact become regulated by such a certificate was no longer a casual, occasional, or reciprocal carrier, herein called casual carriers.

(3) There is no provision in the Federal law by which persons operating "travel bureaus" can be licensed to sell transportation for movement by casual carriers.

(4) Because the Federal government has in fact prohibited instead of regulated the operation of casual carriers and has made no provision for regulating persons selling transportation for carriage by casual carriers in defiance of the Federal law, there is no such Federal regulation as is

contemplated by the provisions of the State statute regulating motor carrier transportation agents.

(5) The decision of this court in *California* v. *Thompson*, 313 U. S. 109, still applies as the correct interpretation of the State statute.

Upon appeal by the plaintiff the Appellate Department of the Superior Court affirmed the judgment of the Municipal Court (R. 15) on the ground that, by reason of the order of the Interstate Commerce Commission (33 Motor Carriers Cases 69, 81) the Interstate Commerce Act applied to the activities of the defendant, thereby excluding the State of California from all jurisdiction over the defendant (decision of Appellate Department R. 8 to 15; page 30 hereof, appendix to petition).

B

Basis of Jurisdiction of the United States Supreme Court to Review the Judgment

1. Statutory Provisions

The statutory authority believed to sustain the jurisdiction of the Supreme Court of the United States to issue a writ of certiorari in this cause is Judicial Code, Section 237(b), as amended February 13, 1925, Chap. 229, Sec. 1, 43 Stat. 937; January 31, 1928, Chap. 14, Sec. 1, 45 Stat. 54, and April 26, 1938, Chap. 440, 45 Stat. 466 (U. S. C. A. Title 28, Sec. 344).

2. The Statute of the State, The Validity of Which Is Involved

The statute of the State, the validity of which was denied by the Appellate Department of the Superior Court, the highest court of the State having jurisdiction of an appeal from a judgment of a municipal court in a misdemeanor

action, is Chapter 390 of the Statutes of 1933 of the State of California, page 1011, as amended by Chapter 665, Statutes of 1935, page 1833, and Chapter 539, Statutes of 1941, page 1861, the pertinent portions of which are set forth in full, together with summary of other sections thereof, commencing at page 20 hereof (appendix to this petition).

We summarize the pertinent portions of the statute, as follows:

TITLE

An Act to provide for the regulation, supervision and licensing of motor carrier transportation agents.

Legislative Declaration for the Necessity of the Act.

(Sec. 1) Public welfare requires the regulation of persons who act or hold themselves out as acting as intermediaries between the public and those motor carriers of passengers who are not required by law to obtain, or *who have not obtained* a certificate of convenience and necessity from the Railroad Commission of the State of California.

Definition—Application of the Act.

(Sec. 2) a. *Motor Carrier Transportation Agent.* One who sells or offers for sale or negotiates for transportation over the public highways of the State of California.

b. *Motor Carrier.* One who transports or offers or proposes to transport persons for compensation over the public highways of the State without holding a valid certificate of convenience and necessity from the Railroad Commission of California or the Interstate Commerce Commission, authorizing the holder thereof to transport passengers.

c. *Application.* The Act shall apply to agents acting as representatives of non-certificated carriers in the sale of interstate transportation until such time as Congress or

the Interstate Commerce Commission shall take action "regulating or requiring licenses of motor carrier transportation agents" as defined in the Act.

The Act does not apply to the transportation of persons without compensation, or to the transportation of farm workers and other instances having no relation to the issues presented in this case.

License Requirement

One desiring to engage in the business of motor carrier transportation agent must secure a license (Sec. 3) from the California Railroad Commission (Sec. 4). Persons desiring a license must file a verified application therefor (Sec. 6) and pay a fee of $5.00 (Sec. 7). Licenses expire yearly on December 31st, subject to provisions for renewal prescribed by the Commission (Sec. 7). Before a license may be issued the licensee must file a surety bond in the sum of $1,000, conditioned upon the faithful performance by the motor carrier of the contract entered into by such agent, and the honest and faithful performance of the duties of such agent. There may be filed a blanket bond of not over $25,000 to cover the acts of agents and employees of a corporation licensee (Sec. 8).

Records to be Kept by Agents.

Motor carrier transportation agents are required to keep, for a period of two years, an exact and permanent record of all transactions had by them as such agents, including the amount paid to such agent by each person transported, point of destination, and name of the person, firm or corporation acting as motor carrier, which record shall be at all times open to inspection by any officer or agent of the state, county or city and county within the State.

Penalty for Operation Without License.

Fine of not to exceed $500, or by imprisonment in the County Jail for a term not to exceed six months, or by both such fine and imprisonment, in the discretion of the court, or, if a corporation, by a fine not to exceed $2,500; and for a second and subsequent offense a fine of not to exceed $1,000, or imprisonment in the county jail or state prison for a term not to exceed one year, or both, or, if a corporation, a fine not to exceed $5,000.

The Act contains several other provisions, including provision for suspension or revocation of license, punishment for violation of license, list of certain specific acts which constitute one a motor carrier transportation agent, and a rule of evidence relative to burden of proof, which do not appear to be pertinent to the instant action.

3. Date of Judgment

The final judgment of the Appellate Department of the Superior Court sought to be reviewed, was rendered on March 15, 1946, (R. 15). Petitioner filed a petition for rehearing on March 22, 1946, (R. 16). Such petition was considered by the court and denied on March 25, 1946, (R. 27).

The decision of the Appellate Department of the Superior Court is a memorandum or unpublished opinion, and is printed in full herein, commencing at page 30 (appendix to opinion).

4. Nature of the Case and Rulings of the Appellate Department of the Superior Court

I

Nature of the Case

The case is a criminal prosecution for a misdemeanor arising out of the violation of a State statute, which was commenced by the filing of a complaint in the Municipal Court of the City of Los Angeles charging the defendant, in Count I thereof, with having engaged in the capacity of a motor carrier transportation agent without having a license so to do from the Railroad Commission of the State of California (R. 2). When the defendant was arraigned he entered a plea of not guilty (R. 4). No written plea was entered for the reason that, under the rule of practice of the State, pleas in criminal cases are oral (California Penal Code, Section 1017).

Upon the action coming to trial, Count II of the complaint was dismissed by the plaintiff (R. 4) and the defendant moved to dismiss the remaining count upon the ground that the court lacked jurisdiction (R. 9), basing such alleged lack of jurisdiction upon the claim that, by reason of the order of the Interstate Commerce Commission in *Ex Parte No. MC 35* (33 Motor Carriers Cases 69), the federal government had taken over the regulation of persons who sell transportation over casual, occasional or reciprocal carriers of passengers, and that the jurisdiction of the State of California over such persons was thereby ousted (R. 5, 6, 27). The motion of the defendant was granted and the cause dismissed without a trial thereof (R. 5, 7).

Such order and judgment of the Municipal Court is an appealable order (California Penal Code, Sec. 1466, subsec. 1, par. (a). The plaintiff appealed to the Appellate Department of the Superior Court, in and for the County of Los Angeles, State of California, from such order and

judgment (R. 1, 4), which court, under the Constitution and laws of the State of California, is the court of last resort for the review of judgments of the Municipal Court of the City of Los Angeles (see cases at p. 10 of this petition).

II

Rulings of the Appellate Department of the Superior Court.

In its decision sustaining the order and judgment of the Municipal Court the Appellate Department of the Superior Court stated in its opinion (printed herewith commencing at page 30 (appendix to petition) that:

(1) The Interstate Commerce Act regulates the same subject matter as does the State statute.

(2) The order of the Interstate Commerce Commission in *Ex Parte No. MC 35,* (33 Motor Carriers Cases 69) made casual, occasional or reciprocal carriers of passengers subject to the provisions of the Interstate Commerce Act and that thereby persons selling transportation by such carriers were subject to the Interstate Commerce Act.

(3) Some of the provisions of Part II of the Interstate Commerce Act are as applicable to "travel bureaus" as is the State statute.

(4) The action of the Interstate Commerce Commission and of Congress, working together, have required licenses of "travel bureaus" selling transportation by persons operating as casual carriers for compensation.

(5) The decision of this court in *California* v. *Thompson,* 313 U. S. 109, was no longer applicable.

It appears plain from the entire decision of the Appellate Department of the Superior Court that such decision was not based upon the construction of a State statute but upon the assumed effect of the federal Constitution and federal statutes enacted thereunder.

5. Cases Believed to Sustain the Jurisdiction of the Supreme Court of the United States

I

The Judgment of the Appellate Department of the Superior Court Is a Final Judgment

1. The existence of jurisdiction is to be tested by the substantial operation of the judgment.

United States v. *Thompson*, 251 U. S. 407, 412, 64 L. Ed. 333, 341.

2. The judgment finally determines that the defendant is not required to comply with the statute of the State in selling transportation from California to points outside the State.

United States v. *Oppenheimer*, 242 U. S. 85, 88, 61 L. Ed. 161, 164.

3. Upon denying a petition for rehearing the judgment of the Appellate Department of the Superior Court becomes final.

California Judicial Council Rules, Appellate Dept., Superior Court, Rule 7. (Appendix p. 29)

II

The Appellate Department of the Superior Court Is One of Last Resort

Kim Young v. *California* (*Schneider* v. *State, Town of Irvington*), 308 U. S. 147, 154;
California v. *Thompson*, 313 U. S. 109;
Unemployment etc. Comm. v. *St. Francis etc. Ass'n*, 58 Cal. App. (2d) 271, 277;
Berg v. *Trager*, 210 Cal. 323, 325;
People v. *Reed*, 13 Cal. App. (2d) 39, 40.

III

The Writ of Certiorari Will Issue upon the Petition of a State or Its Agencies Where the Claim of Invalidity of the State Statute Is Based upon Conflict with Authority Vested in the Federal Government and Such Claim Is Sustained by the State Court.

State Tax Commission v. *Van Cott*, 306 U. S. 511, 513;
Virginia v. *Imperial Coal Sales Co.*, 293 U. S. 15, 16, 17;
Minnesota v. *Blasius*, 290 U. S. 1, 5;
McGoldrick v. *Berwind-White etc. Co.*, 309 U. S. 33;
Coleman v. *Miller*, 307 U. S. 433;
Ireland v. *Woods*, 246 U. S. 323, 327, 328;
California v. *Thompson*, 313 U. S. 109.

IV

The Judgment of the Court Was Based upon an Asserted Conflict of the State Statute with a Power Vested in the Federal Government.

State Tax Commission v. *Van Cott* (*supra*), 306 U. S. 511, 514.

V

Section 237 of the Judicial Code Makes No Distinction between Civil and Criminal Cases in Respect to the Review of the Judgments of State Courts by the Supreme Court of the United States.

Twitchell v. *Commonwealth of Pennsylvania*, 74 U. S. 321, 324.

6. Grounds upon Which It Is Contended the Questions Involved Are Substantial

I

If this Honorable Court is unable to say that every question is foreclosed by prior decisions and clearly not debatable, it cannot be said that no question of substance is presented.

Chesebro v. *Los Angeles County Flood Control District,* 306 U. S. 459, 463;

Hamilton v. *University of California,* 293 U. S. 245, 258.

II

Until Congress, under the commerce power, adopts legislation inconsistent with it, a State statute in the nature of a police regulation requiring a broker whose business has a local situs within the State, though he deals in matters of interstate commerce, to secure a license upon an application showing his character, responsibility and good faith in conducting such business, and requiring a bond to be posted, conditioned upon the honest conduct of his business, is a valid State statute, its effect as a regulation upon interstate commerce being indirect and incidental only.

Hartford Accident & Indemnity Co. v. *Illinois,* 298 U. S. 155, 158;

Thompson v. *California,* 313 U. S. 109.

III

A State regulatory statute is not void as imposing a burden upon interstate commerce where the burden imposed is an inseparable incident of the exercise of legislative

authority which, under the federal Constitution, has been left to the States.

Ziffrin v. *Reeves*, 308 U. S. 132, 141;
California v. *Thompson, supra*, 313 U. S. 109.

IV

In the absence of the exercise of federal authority, and in the light of local exigencies, the State is free to act in order to protect its legitimate interests, even though interstate commerce is directly affected.

Eichholz v. *Public Service Commission*, 306 U. S. 268, 274;
Kelly v. *Washington*, 302 U. S. 1, 10.

V

Congress, in enacting the Federal Motor Carrier Act of 1935, did not intend to supersede State police regulations established for the protection of the public.

H. P. Welch Co. v. *New Hampshire*, 306 U. S. 79, 85;
Maurer v. *Hamilton*, 309 U. S. 598, 614;

See, also:

South Carolina State Highway Dept. v. *Barnwell Bros.*, 303 U. S. 177, 189.

VI

In the absence of federal legislation covering the subject, the State may impose, even upon vehicles using the highways exclusively in interstate commerce, nondiscriminatory regulations for the purpose of insuring the public safety and convenience.

Sprout v. *South Bend*, 277 U. S. 163, 169;
Bradley v. *Public Utilities Com.*, 289 U. S. 92, 95;
California v. *Thompson, supra*, 313 U. S. 109.

VII

The transportation, sold by persons in the business in which Edmondson is engaged (travel bureau), is accomplished by drivers of automobiles who operate independently and who often have no financial responsibility. The only effective way of assuring the performance of their contract is through control of the licensed agents and by requiring such agents to furnish proper bonds. The statute enacted to meet the known conditions prevailing on the highways of California at the present time is a valid exercise of the police power of the State.

Finn v. *Railroad Commission* (Three-Judge Statutory Court), 2 Fed. Supp. 891, 894;

California v. *Thompson*, 313 U. S. 109.

VIII

The statute involved in this case has been held to only incidentally, if at all, affect interstate commerce and to constitute a valid exercise of the police power (*California* v. *Thompson, supra*, 313 U. S. 109), and statutes of the type involved have been held by State courts to only incidentally affect interstate commerce and that since they are well within the reasonable exercise of the police power of the State they are valid.

Bowen v. *Hannah*, 167 Tenn. 451, 71 S. W. (2d) 672, 676;

Francis v. *Allen*, 54 Ariz. 377, 386, 96 Pac. (2d) 277, 281;

Martin v. *Railroad Com.* (Tex. Civ. App.), 93 S. W. (2d) 1155, 1159.

7. Stage in Proceedings and Method of Raising Federal Questions

When the action was called for trial in the Municipal Court the defendant moved to dismiss because of lack of jurisdiction (R. 4, 5, 6, 27) by reason of the order of the Interstate Commerce Commission in *Ex Parte No. MC 35* (33 Motor Carriers Cases 69), and the decision of this Court in *Levin, et al.* v. *United States, et al.*, 319 U. S. 728, affirming per curiam *Drake, et al.* v. *United States, et al.*, Civil Action No. 4605 (United States District Court, Northern District of Illinois, Eastern Division), unreported, having divested the State of jurisdiction, and, by reason of the said order of the Interstate Commerce Commission the State statute was an invalid attempt to regulate interstate commerce (R. 5, 6, 27).

The findings of the Interstate Commerce Commission in *Ex Parte No. MC 35*, 33 Motor Carriers Cases 69, as they appear at page 81, are printed herein at page 24 (appendix to petition), and the findings of the District Court in *Drake et al.* v. *United States, et al.*, Civil Action No. 4605, *supra*, as they are published in 3 Federal Carriers Cases 2297, at pages 2298, 2299, are printed herein commencing at page 24 (appendix to petition).

The plaintiff, your petitioner, opposed such motion (R. 28) and argued that *California* v. *Thompson*, 313 U. S. 109, and the findings of the United States District Court in *Drake, et al.* v. *United States, et al.*, Civil Action No. 4605, *supra* (U. S. D. C., No. Dist. of Ill., Eastern Div.), unreported, sustained the validity of the State law. The motion of the defendant was granted, and the action was dismissed (R. 5). The plaintiff appealed from the judgment and order of dismissal (R. 1, 5).

Upon appeal the plaintiff and defendant, in their respective briefs, urged the same points as below, and the plaintiff

relied in such appeal upon the two cases cited by it to the trial court, and other cases by this court, supporting its position that the State, in the absence of applicable federal laws, could, under the police power, enact regulations affecting Interstate Commerce, and could enact laws which were not in conflict with, but which tended to aid in carrying out, the policy of the federal government.

C

The Questions Presented

I

Do the provisions of the Interstate Commerce Act provide a means of regulating (as distinguished from possible criminal prosecution) persons who sell interstate transportation by carriers operating as casual, occasional or reciprocal carriers in defiance of the order of the Interstate Commerce Commission removing such carriers from the exemption contained in Section 203 (b) (9) of the Federal Motor Carriers Act (Interstate Commerce Act, Part II; U. S. C. A. Title 49, Sec. 303 (b) (9))?

II

Is a state statute which tends to carry out the policy of the federal government, as expressed in the Federal Motor Carriers Act, *supra*, the enforcement of which, in some measure at least, will aid in the enforcement of a federal law, and which will not interfere with the movement of interstate traffic, a valid exercise of the police power of the State?

D

The Reasons Relied On for the Allowance of the Writ

I

The Appellate Department of the Superior Court has decided a federal question of substance not heretofore determined by this court, to wit, the effect of the order of the Interstate Commerce Commission in "Exception of Casual, Occasional, or Reciprocal Transportation of Passengers by Motor Vehicles," *Ex Parte No. MC 35*, 33 Motor Carriers Cases 69, upon State statutes regulating and licensing under State police power, persons not having a broker's license from the Interstate Commerce Commission, and who sell interstate transportation by casual, etc., carriers who do not have a certificate of convenience and necessity from the Interstate Commerce Commission.

II

The Appellate Department of the Superior Court has decided a federal question of substance not heretofore determined by this Honorable Court and has decided the question in a way which is probably not in accord with the applicable decisions of this Court.

III

The question decided by the Appellate Department of the Superior Court is one of utmost importance to every State and to the federal government as well, as it involves the authority of the States to regulate and supervise a business which is fraught with great evil unless it is regulated and controlled so as to exclude irresponsible persons from engaging therein.

IV

In order to adequately protect the public against prevalent evils which have arisen and now extensively exist because of the acts of so-called "travel bureaus," transportation agents and the like, the proprietors of which arrange for and sell interstate transportation by casual or private motor vehicles who have no certificate of convenience and necessity from the Interstate Commerce Commission, it is important that this court determine whether the Interstate Commerce Commission (its decisions to the contrary notwithstanding) has authority to license such travel bureaus etc., and to require that they furnish faithful performance bond, and whether, in the absence of such power in the Interstate Commerce Commission, the States have power to require that persons engaged in such business furnish protection to the public by securing a license from the State and give a faithful performance bond.

WHEREFORE, petitioner respectfully prays that a writ of certiorari be issued out of and under the Seal of this Honorable Court to the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case, numbered and entitled on its docket, Superior Court No. CR A 2160, Trial Court No. 35,316, "People of the State of California, plaintiff and respondent, vs. Elmer W. Edmondson, defendant and appellant"; and that the said judgment of the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles may be reversed by this Honorable Court;

and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

PEOPLE OF THE STATE OF CALIFORNIA,
By RAY L. CHESEBRO,
DONALD M. REDWINE,
JOHN L. BLAND,
Counsel for Petitioner.

APPENDIX

TO PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF

Chapter 390 of Statutes of 1933 of the State of California, Page 1011, as Amended by Statutes of 1935, Page 1833, and Statutes of 1941, Chapter 539, Page 1861.

Section 1. (Declaration of Legislative Policy.)

Section 2. *Transportation agent and motor carrier defined: Application of act: Interstate agents.* A motor carrier transportation agent within the meaning of this act is a person who, acting either individually or as an officer, commission agent, or employee of a corporation, or as a member of a copartnership, or as a commission agent or employee of another person or persons, sells or offers for sale, or negotiates for or holds himself out as one who sells, furnishes or provides, transportation over the public highways of this State when such transportation is furnished, or offered or proposed to be furnished, by a motor carrier as defined in this act.

A motor carrier within the meaning of this act is any person, firm, or corporation, their lessees, trustees, receivers or trustees appointed by any court whatsoever, transporting, or offering or proposing to transport, as a common carrier or otherwise, persons for compensation over the public highways of the State of California, which said persons are transported, or to be transported, either out from one terminus in California and return thereto or between two or more termini, without holding a valid certificate of public convenience and necessity or permit issued by either the Railroad Commission of the State of California or the Interstate Commerce Commission authorizing and permitting such carrier to so transport persons over such highways or any of them.

Application of act. This act shall not apply to the carriage, or proposed carriage, of any person, or persons, when no compensation for such carriage is paid, or offered

or proposed to be paid, or requested or required to be paid, by, or on behalf of, a person, or persons, transported or to be transported; nor to those engaged solely in the carriage of transportation to and from work, of employees engaged in farm work on any farm of the State of California, nor to those engaged solely in the carriage or transportation to and from work of employees of any nonprofit cooperative association organized pursuant to any of the laws of the State of California; nor to movements of persons wholly within the corporate limits of a single municipality; nor to transportation over a route wholly within the corporate limits of a single municipality; nor to transportation over a route wholly or partly within a National park where such transportation is sold in conjunction with or as part of a rail trip; provided, however, that the transportation of persons whereby there is paid, by, or on behalf of, the person, or persons, transported, a portion of the expense incurred in course of such transportation, shall be deemed transportation provided by a motor carrier within the meaning of this act.

Interstate agents. In the absence of action on the part of Congress or the Interstate Commerce Commission regulating or requiring licenses of motor carrier transportation agents acting as such for motor carriers carrying passengers in interstate commerce (in this paragraph referred to as "interstate motor carrier transportation agents") this act shall apply to and regulate such interstate motor carrier transportation agents to the same extent and in the same manner that it regulates or requires the licensing of motor carrier transportation agents acting as such for motor carriers carrying passengers in intrastate commerce (in this paragraph referred to as "intrastate motor carrier transportation agents").

Section 3. *License required.* From and after sixty (60) days after this act becomes effective, it shall be unlawful for any person, firm or corporation to engage in the business, or act in the capacity, of a motor carrier transportation agent within the meaning of this act without first obtaining a license therefor. No license shall be issued to any

copartnership or corporation, it being the intent hereof to require each person acting as a motor carrier transportation agent, in this State, to be individually licensed therefor; provided, however, that if an applicant is an officer or commission agent or employee of a corporation, or a member of any copartnership, or a commission agent or employee of any person or copartnership, he shall so state in his application, and the corporation, copartnership, or person of which applicant is an officer, member, or employee, as the case may be, shall join in applicant's application and shall set forth therein the relationship between applicant and said person, copartnership and/or corporation so joining.

Section 4. (Enforcement provisions.)

Section 5. (Disposition of fees.)

Section 6. (Method of obtaining license.)

Section 7. (Disposition of fees—of $5.00 per license.)

Section 8. *Bond: Amount: Filing: Conditions.* No license shall be issued unless the applicant therefor shall provide a good and sufficient bond in the sum of one thousand dollars ($1,000), which bond shall be filed by such applicant as principal and by some solvent surety company, authorized to do business in the State of California, as surety, payable to the State of California, and/or any person, or persons, for, or to whom, applicant may, or shall, furnish or provide transportation, and shall be conditioned: (1) upon the faithful performance, by the motor carrier or motor carriers for whom applicant acts or proposes to act as a motor carrier transportation agent, of the contract or agreement of transportation negotiated by the licensee, and (2) the honest and faithful performance by applicant of any undertaking as a licensed motor carrier transportation agent under this act; provided, however, that if any corporation, copartnership, or person of which applicant is an officer, member, commission agent or employee, as the case may be, shall join in applicant's application as provided in Section 3 hereof, applicant shall be deemed to have complied with the provisions of this section if applicant shall provide, or there shall, theretofore, have been filed with the Railroad Commission, a good and sufficient bond in a sum to be fixed by the Railroad Commission, not

exceeding twenty-five thousand dollars ($25,000), executed by the corporation, copartnership, or person, joining in such application, as principal, and by some solvent surety company, authorized to do business in the State of California, as surety, payable to the State of California, and/or any person, or persons, for, or to whom, any officer, member, commission agent or employee of said principal, licensed under the provisions of this act may, or shall, furnish or provide transportation, conditioned: (1) upon the faithful performance, by the motor carrier or motor carriers for whom any officer, member, commission agent or employee of said principal acts or proposes to act as a motor carrier transportation agent of the contract or agreement of transportation negotiated by the licensee, and (2) the honest and faithful performance, by any such officer, member, commission agent or employee so licensed, of any undertaking as a licensed motor carrier transportation agent under this act.

Section 9. (License—not transferable.)

Section 10. (Suspension or revocation of license.)

Section 11. *Records to be kept by agents.* It shall be the duty of all motor carrier transportation agents to maintain and keep, for a period of two (2) years, an exact and permanent record of all transactions had by them as such agents, including the amount paid to such agents, including the amount paid to such agent by each person transported, point of destination, and the name of the person, firm or corporation acting as motor carrier. The records hereby required to be kept shall at all times be open to inspection by any officer or agent of the State, county, or city and county within the State.

Section 12. (Railroad Commission to conduct hearings.)

Section 13. (Establishes rule of construction of the Act.)

Section 15. (Provides for prosecution by District Attorney of violations. Other statutes provide, however, that in cities of the 1½ class (Los Angeles) prosecutions of misdemeanors shall be by the City Attorney.)

Section 16. (Provides penalties for violations.)

Section 17. (Also a penal provision.)

Section 19. (Severability provision.)

Finding of the Interstate Commerce Commission in Ex Parte No. MC 35

EXEMPTION OF CASUAL, OCCASIONAL, OR RECIPROCAL TRANSPORTATION OF PASSENGERS BY MOTOR VEHICLES

"We find that, in order to carry out the national transportation policy declared in the act, the exemption of the casual, occasional, or reciprocal transportation of passengers by motor vehicle in interstate or foreign commerce for compensation as provided in section 203(b)(9) of the act should be removed to the extent necesary and so as to make applicable all provisions of the act to such transportation when sold, offered for sale, provided, procured, furnished, or arranged for by any person who sells, offers for sale, provides, furnishes, contracts, or arranges for such transportation for compensation or as a regular occupation or business."

(*Ex parte No. MC 35*, 33 Motor Carrier Cases 69, at page 81.)

Findings of Fact and Conclusions of Law

In *Drake, et al.* v. *United States, et al.*, Civil Action No. 4605, (United States District Court, Northern District of Illinois, Eastern Division) Unreported. Judgment Affirmed Per Curiam, *Levin* v. *United States*, 319 U. S. 728.

(Note: The Findings of Fact and Conclusions of Law in the above unreported case are copied below as the same are published in 3 Federal Carriers Cases 2297, at pages 2298 and 2299.)

FINDINGS OF FACT

1. Under Section 203(b)(9) of the Interstate Commerce Act (U. S. C., Tit. 49, Sec. 303) the Congress of the United States exempted casual, occasional, or reciprocal interstate transportation of passengers from regulations provided in the Act for motor carrier interstate commerce, unless and to the extent that the Interstate Commerce Commission should from time to time find that application of such regulations to such transportation would be necessary to carry out the policy of Congress as stated in the Act.

2. Upon petition of the National Bus Traffic Association, then an association of authorized interstate carriers, since incorporated, whose principal place of business is in Chicago, Ill., the Interstate Commerce Commission instituted proceedings to investigate casual, occasional, or reciprocal interstate transportation of passengers, to determine whether or not exemptions under said Section 203(b)(9) should be removed, and the extent, if any, to which they should be removed. The proceedings before and the record considered by the Interstate Commerce Commission is stated in the decision, report, and order of the Commission entered March 21, 1942 (3 Federal Carriers Cases Par. 30,239), attached as Exhibits A and B to the Commission's answer herein, which said report and order are hereby adopted and made a part of those findings. The order of the Interstate Commerce Commission removed exemption of casual, occasional, and reciprocal interstate transportation of passengers under provisions of said Section 203(b)(9), to the extent that such transportation is sold, offered for sale, provided, procured, furnished, or arranged for by a third person intermediary, who engages in making such transactions as a regular business or occupation. Under the Commission's order such casual, occasional, or reciprocal transportation remains exempt under said Section 203(b)(9) unless it is sold, offered for sale, procured, provided, furnished, or arranged for by or through the assistance of some third person engaged in such transactions as a business.

3. Plaintiff, T. A. Drake, is a resident of the State of Texas, the owner of an automobile, who in the past and who contemplates in the future making interstate trips in his automobile and procuring casual, occasional, or reciprocal interstate passengers on the basis of payment of a fixed sum or percent of cost of operation of car, through and by the aid of so-called "travel bureaus" upon payment of some cash fee to said "bureaus." The Interstate Commerce Commission order of March 21, 1942, when and if it goes into effect, will remove exceptions involved in such transportation and require plaintiff, T. A. Drake, when operating in the manner alleged in the complaint, to comply with the regulatory provisions of the Interstate Commerce Act.

4. Plaintiffs T. C. Jack Burroughs and William Henry Maguire are partners in the ownership and operation of a "travel bureau" in the State of California, and the said Burroughs has an interest in other "travel bureaus" in the State of Texas. Other intervenors herein are owners and operators of "travel bureaus" in the State of Texas. The business of these "travel bureaus" is to sell, provide, furnish, or arrange for casual, occasional, or reciprocal transportation, interstate and intrastate, and bring together automobile owners or drivers and prospective passengers, for which service a fee, either fixed sum or percent of transportation charge, is collected. Such "travel bureaus" are not made subject to regulation under the Interstate Commerce Act and the Interstate Commerce Commission order of March 21, 1942, does not subject such "travel bureaus" to any regulation. Such "travel bureaus" are limited, under the Commission's order of March 21, 1942, to sale or arrangement of casual, occasional, or reciprocal transportation of passengers for compensation, through owners and operators of motor vehicles, who have complied with regulations of the Interstate Commerce Act, and such "travel bureaus" in conducting such operations would be subject to provisions of Section 211 of said Act, (U. S. C., Tit. 49, Sec. 311) requiring a license to operate as a "Broker."

5. Plaintiff T. C. Jack Burroughs filed a petition to intervene and for reconsideration and rehearing in the proceeding Ex Parte MC 35, including the order entered March 21, 1942, with the Interstate Commerce Commission, which petition was denied by the Commission on July 31, 1942. Prior to entering the order of March 21, 1942, hearings were held at a number of places throughout the United States, notices of such hearings having been given wide publicity, including official notice to all so-called "travel bureaus" then known to the Commission. Proceedings, including hearings, were participated in by numerous interested parties, including carriers, travel agencies, chambers of commerce, state authorities, and so-called "travel bureaus." Testimony, arguments, and briefs of various parties to these proceedings were submitted to the Commission,

including the so-called "travel bureaus." "Travel bureaus" participating in these proceedings filed petitions for reconsideration and rehearing which were denied by the Commission on July 31, 1942. Plaintiffs were permitted to introduce evidence at the court hearing, for the purpose of showing standing of plaintiffs to sue, and that the Interstate Commerce Commission, in refusing to reopen and reconsider its order of March 21, 1942, had abused its discretion.

CONCLUSIONS OF LAW

1. This court has jurisdiction of the action herein and its venue is within the jurisdiction of the court.

2. Casual, occasional, or reciprocal transportation of passengers, between one or more states, where the passenger pays a part of the expenses, whether in a fixed sum of money or percent of the cost of operation, to the owner or driver of an automobile, is interstate commerce.

3. The Constitution of the United States, Article 8, grants the full and exclusive power to Congress to regulate interstate commerce, which includes the power to regulate casual, occasional, or reciprocal interstate transportation of passengers for compensation. Under Section 203 (b) (9) of the Interstate Commerce Act (U. S. C., Tit. 49, Sec. 303) Congress provided that casual, occasional, or reciprocal interstate transportation of passengers should be exempt from the regulations of the Interstate Commerce Act, unless and to the extent that the Interstate Commerce Commission should find that application of such regulations to such transportation would be necessary to carry out the policy of Congress stated in the Act. The delegation of authority to the Interstate Commerce Commission to remove the exemption of casual, occasional, or reciprocal interstate transportation of passengers and to place such transportation under the regulatory provisions of the Interstate Commerce Act, is a constitutional delegation of the power of Congress, with proper and definite criteria to be used by the Commission in its determination as to when and to what extent such transportation should be subject to the regulations provided in the Act.

4. The Congress of the United States has enacted no statutes providing for the regulation of so-called "travel bureaus" whose business it is to sell, provide, furnish, or arrange for casual, occasional, or reciprocal interstate transportation for compensation, and the order of the Interstate Commerce Commission entered March 21, 1942, does not attempt to provide any regulation of such so-called "travel bureaus."

5. The order of the Interstate Commerce Commission entered March 21, 1942, which removes the exemption under said Section 203 (b) (9) of casual, occasional, or reciprocal interstate transportation of passengers for compensation, where such transportation is sold, procured, provided, furnished, or arranged for by a third person intermediary who engages in making such transactions as a regular business or occupation, is within the statutory authority of the Commission, is supported by substantial evidence, and is lawful. Evidence introduced by plaintiffs, at the court hearing, failed to disclose any abuse of discretion on the part of the Commission in refusing to reopen its order of March 21, 1942, for reconsideration and rehearing.

6. In the proceedings Ex Parte MC 35, including the order entered therein on March 21, 1942, the Interstate Commerce Commission provided and granted to all parties to the said proceedings, and to the public generally, including Plaintiffs T. A. Drake, T. C. Jack Burroughs, and William Henry Maguire, a full and fair hearing, as is contemplated under the Constitution and laws of the United States. Denial of the Petition on July 31, 1942, of Plaintiff T. C. Jack Burroughs to intervene and for reconsideration and rehearing of the order of March 21, 1942, did not constitute a denial of a full and fair hearing in the proceedings under Ex Parte MC 35.

7. The order of the Interstate Commerce Commission entered March 21, 1942, does not violate the Fifth Amendment to the Constitution of the United States, and does not damage, destroy, or take the property of plaintiffs, without due process of law.

8. The complaint herein is without equity and should be dismissed at the cost of plaintiffs.

Judicial Council Rules—Appellate Departments, Superior Court

Rule 7. Rehearings and Finality of Judgment

At any time before a judgment of an Appellate Department becomes final, as hereinafter provided, it may vacate such judgment and order a rehearing.

Unless a rehearing shall be so ordered, every judgment of an Appellate Department shall become final as follows:

(a) Upon the expiration of seven days after the same shall have been pronounced, if no petition for a rehearing shall have been filed within said period of time;

(b) If one or more petitions for a rehearing shall have been filed within said time, then upon the expiration of thirty days after such judgment shall have been pronounced, if such rehearing shall not meanwhile have been granted, or upon the denial of all such petitions if all shall be sooner denied.

A petition for a rehearing must be served on all adverse parties before filing, and shall not be filed unless accompanied by due proof of such service. An answer to any such petition may be served on the petitioning party and filed, if accompanied by due proof of such service, within three days after service of such petition. If a rehearing be ordered, the Appellate Department shall have discretion to place the case on the calendar for further argument or submit it for decision.

Memorandum Opinion by Shaw, P. J.

IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

Superior Court No. CR A 2160

Trial Court No. 35,316

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Appellant,

vs.

ELMER W. EDMONDSON, Defendant and Respondent

MEMORANDUM OPINION

Appeal by plaintiff from an order made by the Municipal Court of the City of Los Angeles, LeRoy Dawson, Judge. Affirmed.

The defendant was charged with violating section 3 of the law regulating motor carrier transportation agents (Stats. 1933, p. 1011; as amended by Stats. 1941, p. 1861; Deering's Gen. Laws, Act 5130c), in that he engaged in business as such an agent in respect to interstate transportation without the license required by that act. When the action came on for trial, but before the trial was begun, the court, on defendant's motion, dismissed the action on the ground that the statute violated is in conflict with the Federal Constitution and particularly of the interstate commerce provisions thereof.

This statute requires a license from the Railroad Commission for every person engaging in the business or acting in the capacity of motor carrier transportation agent, and defines that term so as to include any person who sells, furnishes or provides or negotiates for transportation over public highways of this state by motor carriers who have no permit from either the Railroad Commission or the Interstate Commerce Commission. A bond in the sum of $1000 is also required of licensed agents. It is contended by defendant that these regulations, so far as they apply to

interstate commerce, conflict with regulations of the same subject made by Congress in the Interstate Commerce Act, Part II (enacted in 1935; secs. 301-327, Title 49, U. S. C. A.). The same contention was made in *California* v. *Thompson* (1941), 313 U. S. 109, 85 L. Ed. 1219. It was there held that the same California statute did not conflict with any Federal legislation then applicable to the subject, and that the regulation made by it was of that local nature which states may make and enforce in the absence of Congressional action, and consequently a conviction on a charge identical with that made here was upheld. The plaintiff contends that this decision is conclusive here on the question raised by defendant. But the court there said that "• • • we are concerned here only with the constitutional authority of the state to regulate those who, within the state, aid or participate in a form of interstate commerce over which Congress has not undertaken to exercise its regulatory power." While the two statutes are substantially the same now as when that decision was made, action by the Interstate Commerce Commission, to be discussed later, has altered the case to such an extent as to render that decision no longer controlling.

The part of the Interstate Commerce Act above referred to provides that no person shall sell or offer for sale "transportation subject to this chapter" (which includes all the sections of U. S. C. A. above cited) or make any arrangement to procure such transportation or hold himself out as doing so, unless he has a broker's license issued by the Interstate Commerce Commission, to obtain which he must give a bond and under which he is subject to rules and regulations to be made by the Commission. (Sec. 311, Title 49, U. S. C. A.) It is provided that "this chapter" applies to transportation of passengers or property by motor carrier in interstate commerce and to the procurement of such transportation. (Sec. 302, Title 49, U. S. C. A.) Except for the matters hereinafter discussed, we find nothing anywhere excepting from the operation of "this chapter" the transportation described in the state law above cited, that is, transportation by motor carriers not licensed by either state or federal authority. A motor carrier under the federal law includes

one who under individual contracts or agreements engages in transportation by motor vehicle of passengers or property in interstate or foreign commerce. (U. S. C. A., Title 49, Sec. 303(a), (15) and (16).) At this point it is clear that the provisions of the Interstate Commerce Act just discussed regulate the same subject matter as does the state law under which defendant is charged. If there were no other provisions of either law to be considered, the conclusion would be inescapable that Congress has occupied the field and undertaken the regulation of the same subject matter with which the state has attempted to deal. "If a statute is enacted by Congress covering the subject of the state's regulation, it supersedes the state statute or decision." (*Donnelly* v. *Sou. Pac. Co.* (1941), 18 Cal. 2d 863, 867.) This rule applies to local regulations which the states may make while Congress is silent. (*Cloverleaf Butter Co.* v. *Patterson* (1942), 315 U. S. 148, 155, 86 L. Ed. 754, 762; *Oregon-Washington R. & Nav. Co.* v. *Washington* (1926), 270 U. S. 87, 101, 70 L. Ed. 482, 488.)

There are, however, other provisions of the Interstate Commerce Act to be considered. Section 303(b), Title 49, U. S. C. A., contains several provisions excepting specific kinds of transportation from "this chapter." One of them is as follows: "Nothing in this chapter • • • shall be construed to include • • • nor, *unless and to the extent that the Commission* (the Interstate Commerce Commission) *shall from time to time find that such application is necessary to carry out the national transportation policy declared in the Interstate Commerce Act,* shall the provisions of this chapter, except • • • (an exception immaterial here) apply to (8) • • • or (9) the casual, occasional, or reciprocal transportation of passengers or property by motor vehicle in interstate or foreign commerce for compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business, unless, in the case of transportation of passengers, such transportation is sold or offered for sale, or provided or procured or furnished or arranged for, by a broker, or by any other person who sells or offers for sale transportation furnished by a person lawfully engaged in the transportation of passengers by motor vehicle under a

certificate or permit issued under this chapter or under a pending application for such a certificate or permit." (Emphasis ours.) On the authority of section 303(b) (9) the court, in *California* v. *Thompson, supra,* 313 U. S. 109, 112, 85 L. Ed. 1219, 1221, declared that "Congress has not undertaken to regulate the acts for which respondent was convicted or the interstate transportation to which they related." Possibly the court made this declaration without noticing the words we have underlined in the statute, which in the printed statute are some distance removed from (9); but we must rather presume that they did so with knowledge of the fact that the Interstate Commerce Commission had not then made any such finding as the underlined words provided for. In either case the decision is not authority on the meaning or effect of those words. No question of res judicata is here involved.

But since that decision the Interstate Commerce Commission has acted and, on March 21, 1942, in a proceeding carried on for the express purpose of considering the matter, it made this finding: "We find that, in order to carry out the national transportation policy declared in the Act, the exemption of the casual, occasional, or reciprocal transportation of passengers by motor vehicle in interstate or foreign commerce for compensation as provided in section 203 (b) (9) of the act (Sec. 303 (b) (9), Title 49, U. S. C. A.) should be removed to the extent necessary and so as to make applicable all provisions of the act to such transportation when sold, offered for sale, provided, procured, furnished, or arranged for, by any person who sells, offers for sale, provides, furnishes, contracts, or arranges for such transportation for compensation or as a regular occupation or business." (*Ex parte No. M. C. 35,* 3 F. C. C. 202, 204.) This action was upheld as within the power of the Interstate Commerce Commission by the Federal District Court for the Northern District of Illinois, in *Levin* v. *U. S.,* 3 F. C. C. 2297, an action apparently brought for the express purpose of testing the validity of the Interstate Commerce Commission order. The judgment of the District Court was affirmed without opinion in (1943), 319 U. S. 728, 87 L. ed. 1692. The effect of the Interstate Commerce Commission finding thus affirmed is, as appears from the statutory pro-

vision above quoted, to make "the casual, occasional or reciprocal transportation of passengers or property by motor vehicle in interstate or foreign commerce" subject to the provisions of the part of the Interstate Commerce Act already cited relating to motor carriers ("this chapter") to the extent stated in the finding. This is sufficient to include the present case. Since the nonapplicability of those provisions to such transportation was the basis of the decision in *California* v. *Thompson, supra,* that decision is not determinative of the issue in the situation now appearing.

The plaintiff attempts to make some point on certain findings of the District Court in *Levin* v. *U. S., supra.* Since the decision of the United States Supreme Court there was merely to affirm a judgment which declared the Interstate Commerce Commission order valid, we doubt whether it may be regarded as an approval of so-called findings or conclusions of law of the trial court which purport to put a construction on the order in some matter not apparently going to its validity. But by-passing these doubts, we find no help for plaintiff in these findings. The finding mainly relied on is that the order "does not attempt or provide any regulation of so-called travel bureaus." This may be so, but there was no occasion for the order to do so. Congress had, in the provisions of the act already referred to, provided all of the statutory regulations which, as we have already said, cover the field in which the state law operates, but they were not effective until the Interstate Commerce Commission made the necessary finding. When it did so, the Congressional regulations took effect of their own force, not as orders of the Interstate Commerce Commission.

The trial court also declared, in its conclusions of law in the *Levin* case, that Congress has enacted "no statutes for the regulation of so-called travel bureaus." We cannot know what the court had in mind when making this declaration. Perhaps it meant only that there was no other law than that under which the Interstate Commerce Commission was acting. At any rate, it is clear to us that some of the provisions of Part II of the Interstate Commerce Act are as applicable to such bureaus as is the state act under which defendants are being prosecuted. Neither mentions

"travel bureaus" by that name, but both have provisions applicable to them, the effect of which we have already discussed.

Plaintiff also contends that, even if the provisions of the Interstate Commerce Act apply to defendants, they are also amenable to prosecution under the state law, asserting that the same act may constitute a violation of both federal and state laws and the doer may, in such a case, be punished under both laws. This is the rule in some cases, but it is not of universal application. The same argument was made to the United States Supreme Court in *Southern R. Co.* v. *Railroad Comm.* (1915), 236 U. S. 439, 445-6, 59 L. ed. 661, 665, where the attempt was made to enforce against a railroad company the penalty provided by a state law for breach of a state regulation of safety appliances on railroad cars, although there was then in force a federal law regulating the same subject in a very similar manner. The court rejected the argument, saying: "But the principle that the offender may, for one act, be prosecuted in two jurisdictions, has no application where one of the governments has exclusive jurisdiction of the subject-matter, and therefore the exclusive power to punish. Such is the case here where Congress, in the exercise of its power to regulate interstate commerce, has legislated as to the appliances with which certain instrumentalities of that commerce must be furnished in order to secure the safety of employees. Until Congress entered that field, the states could legislate as to equipment in such manner as to incidentally affect, without burdening, interstate commerce. But Congress could pass the safety appliance act only because of the fact that the equipment of cars moving on interstate roads was a regulation of interstate commerce. Under the Constitution the nature of that power is such that, when exercised, it is exclusive, and *ipso facto* supersedes existing state legislation on the same subject."

Moreover, we think the state has manifested its intention to withdraw from the field when regulation by Congress becomes effective. In 1941, the legislature added this provision to section 2 of the state law here in question: "In the absence of action on the part of Congress or the Interstate Commerce Commission regulating or requiring licenses of

motor carrier transportation agents acting as such for motor carriers carrying passengers in interstate commerce (in this paragraph referred to as 'interstate motor carrier transportation agents') this act shall apply to and regulate such interstate motor carrier transportation agents to the same extent and in the same manner that it regulates or requires the licensing of motor carrier transportation agents acting as such for motor carriers carrying passengers in intrastate commerce (in this paragraph referred to as 'intrastate motor carrier transportation agents').'' As we have already held, the actions of Congress and the Interstate Commerce Commission, working together, have required licenses as specified in this amendment. The declaration that the state action shall apply ''in the absence of'' federal action we regard as equivalent to a declaration that it shall no longer apply after federal action. So regarded, it removes the foundation from plaintiff's argument now under consideration.

The order appealed from is affirmed.

Dated Mar. 15, 1946.

Shaw, Presiding Judge.

I concur.

Kincaid, Judge.

I concur. Most of appellant's argument may be answered by pointing out that prior to *Ex Parte M. C. 35,* a person who was engaged in selling casual transportation only, was not a broker, as that term was used in Part II of the Interstate Commerce Act (section 303(18)), nor was such a person required to have a license (section 311), but that since *Ex parte M. C. 35* subjected casual passenger transportation procured by one engaged in that business, or for compensation, to the provision of Part II, such a person is both a broker and required to have a license. A license is required of him, and he is subject to the regulation of Part II, whether the casual carrier to whom he sells is certified or is an outlaw.

It is true that the mere fact that the Congress has legislated in a particular part of the field of interstate com-

merce does not necessarily mean that Congress has covered the ground to the exclusion of state regulations. Each situation must be examined to see whether or not there is a direct and positive conflict, so that the federal and state acts cannot consistently stand together. (See discussion in *Kelly* v. *Washington* (1937), 302 U. S. 1, 82 L. Ed. 3, 10.) Where, however, as in the case before us, a federal statute requires a license of one engaging in certain activities, and regulations are prescribed for one so licensed, a state statute which requires a further license and prescribes further conditions does appear to be in conflict with the federal statute, and so to be without validity.

Bishop, Judge.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1264

THE PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

vs.

ELMER W. EDMONDSON

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The petitioner respectfully presents this brief in support of its petition for a writ of certiorari directed to the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, to review the judgment of that court rendered in the case entitled, "*People of the State of California* v. *Elmer W. Edmondson.*"

Opinion of the Court Below

Upon appeal by the plaintiff, People of the State of California, from the order and judgment of the Municipal Court of the City of Los Angeles, the Appellate Department of the Superior Court affirmed such order and judg-

ment and delivered a Memorandum Opinion (R. 8). Such Memorandum Opinion will not be reported in any official reporting service. It will, however, be kept on file in the office of the Clerk of such Appellate Department, and, if affirmed by this Honorable Court, will constitute the rule of law in such Municipal Court and will be cited as authority in cases involving the validity of the same or similar statutes in other courts of the State of California. The Memorandum Opinion referred to is printed in an appendix to our petition for writ of certiorari (p. 30).

Grounds of Jurisdiction

The jurisdiction of this Honorable Court is invoked under Section 237(b) of the Judicial Code (28 U. S. C. A. Sec. 344(b). The date of the judgment which petitioner seeks to have reviewed is March 15, 1946 (R. 15). Thereafter, within the time allowed by the Rules of the Judicial Council of the State of California governing appeals from municipal courts to the Appellate Department of the Superior Court, petitioner filed a petition for rehearing (R. 16, 26), which petition was duly considered and denied (R. 27).

Statement of the Case

Elmer W. Edmondson, the defendant in the Municipal Court of the City of Los Angeles, was charged in Count I of a complaint filed in such court with having violated Section 3 of Chapter 390, Stats. 1933, page 1011, of the Statutes of the State of California (R. 2). Pertinent sections of the statute, together with a statement of the substance matter of remaining sections, as amended by Chap. 665, Stats. 1935, page 1833, and Chap. 539, Stats. 1941, page 1861, are set out in full commencing at page 20, appendix to petition, and the pertinent sections are summarized commencing at page 4 of the petition itself.

A complete statement of the case has been made in the petition in the statement of matter involved (p. 1) and the statement of the nature of the case (p. 8). Therefore, in the interests of brevity, the facts of the case will not be repeated here, other than to say that the case involves the power of the State of California to require procurement of a license as a motor carrier transportation agent by persons, sometimes hereinafter called "travel bureaus," who in the State of California, sell interstate transportation for movement over the highways of this State by means of carriers holding no certificate of convenience and necessity from either the Railroad Commission of California or the Interstate Commerce Commission, and who operate or claim to operate as "casual, occasional, or reciprocal" carriers, sometimes hereinafter called "casual" carriers.

The issue presented in this case is very narrow. It concerns only the power of the State of California to require procurement of a license by a person selling interstate transportation for carriage by operators of vehicles operating as "casual" carriers in violation of the order of the Interstate Commerce Commission in *Ex Parte No. MC 35* (33 Motor Carriers Cases 69). The State claims no right to require the procurement of a license by any person, whether or not licensed by the Interstate Commerce Commission, who sells transportation for carriage by carriers having a certificate of convenience and necessity from the Interstate Commerce Commission, or to require a license by any person who is licensed by the Interstate Commerce Commission as a "broker."

Briefly stated, the petitioner's position is that persons operating as casual carriers (without securing a certificate of convenience and necessity from the Interstate Commerce Commission) are engaged in unlawful acts, and that travel bureaus selling transportation by such carriers are "bootleggers" of interstate commerce subject to regula-

tion by the State, insofar as their operation within the State be concerned, even though they may at the same time be subject to criminal prosecution by the Federal Government.

Specifications of Error

The court below erred in holding:

1. That by reason of the order of the Interstate Commerce Commission in "Exemption of Casual, Occasional, or Reciprocal Transportation of Passengers by Motor Vehicles," *Ex Parte No. MC 35,* reported in and cited as *Ex Parte No. MC 35,* 33 Motor Carriers Cases 69, the Federal Government has provided a method of regulating such travel bureaus, for which reason the State of California is ousted from jurisdiction.

2. That because of the order of the Interstate Commerce Commission *(Ex Parte No. MC 35, supra)* the Federal Government now provides such regulation as was contemplated by the legislature of the State of California when it amended Section 2 of Chapter 390, Stats. 1933, by Chap. 539, Stats. 1941, page 1861 (appendix p. 20), and that the statutes of the State of California no longer provide for the licensing of travel bureaus selling interstate transportation.

3. That *California* v. *Thompson,* 313 U. S. 109, decided by this Court in 1941, is no longer the law of the case, having been rendered inapplicable by reason of the order of the Interstate Commerce Commission in *Ex Parte No. MC 35, supra,* and the Amendment to Section 2 of Chap. 390, Stats. 1933, *supra,* in 1941 by Chap. 539, Stats. 1941, *supra,* (appendix p. 20).

Summary of the Argument

Point I

THE FEDERAL QUESTION IS SUBSTANTIAL

Point II

THE SUPREME COURT OF THE UNITED STATES HAS NOT DECIDED THE LEGAL EFFECT OF THE ORDER OF THE INTERSTATE COMMERCE COMMISSION IN "EXEMPTION OF CASUAL, OCCASIONAL OR RECIPROCAL TRANSPORTATION OF PASSENGERS BY MOTOR VEHICLES," *EX PARTE No. MC 35.*

Point III

THERE IS NO METHOD PROVIDED BY FEDERAL LAW FOR LICENSING OF PERSONS SELLING INTERSTATE TRANSPORTATION OVER CARRIERS WHO DO NOT HAVE CERTIFICATES OF CONVENIENCE AND NECESSITY.

Point IV

THE STATE LAW GRANTS A PERMIT TO SELL TRANSPORTATION OVER STATE HIGHWAYS ONLY, AND DOES NOT GRANT OR PURPORT TO GRANT A PERMIT TO VIOLATE FEDERAL STATUTES.

Point V

A "CASUAL CARRIER" TRANSPORTING PASSENGERS ON TRANSPORTATION SOLD BY A TRAVEL BUREAU DOES NOT THEREBY BECOME A LAWFUL CARRIER OF INTERSTATE COMMERCE.

Point VI

SECTION 3 OF CHAPTER 390, STATUTES OF 1933, PAGE 1011, IS NOT IN CONFLICT WITH FEDERAL LAW.

Point VII

ADMINISTRATION OF THE STATE STATUTE WILL AID IN THE ENFORCEMENT OF THE FEDERAL LAW RATHER THAN INTERFERE WITH SUCH ENFORCEMENT.

Point VIII

THE STATE LAW TENDS TO CARRY OUT THE POLICY OF THE FEDERAL GOVERNMENT.

Point IX

THE STATE COULD PROHIBIT ANY PERSON FROM SELLING TRANSPORTATION FOR CARRIAGE BY OTHER THAN CERTIFICATED CARRIERS, AND THAT WHICH IT MAY PROHIBIT IT MAY PERMIT UNDER REASONABLE REGULATION.

Point X

A SINGLE ACT MAY CONSTITUTE AN OFFENSE AGAINST BOTH FEDERAL AND STATE LAWS.

ARGUMENT

Point I

The Federal Question Is Substantial

As we shall hereafter show, the Interstate Commerce Commission has held that there is no method whereby such Commission may issue licenses or permits to operators of travel bureaus to engage in the business of selling interstate transportation via persons operating as casual carriers.

In the argument in the court below it was admitted by defendant that, by reason of their carrying passengers to whom transportation was sold by travel bureaus, the carriers were subject to prosecution under Federal law for engaging in interstate transportation without having a certificate of convenience and necessity. That the carriage of such persons is "transportation subject to" the Interstate Commerce Act is undisputed. We shall show that, although the carriers are operating in violation of the Federal law and that the travel bureaus aid, encourage and assist such violation, there is no method for regulating (licensing) such travel bureaus under the Federal law.

Courts are not required to close their eyes to facts with which the ordinary person is familiar. It is well known that, irrespective of the fact that they may be subject to criminal prosecution for engaging in interstate transporta-

tion without having a certificate of convenience and necessity, many operators of automobiles continue to carry, in such commerce, persons to whom transportation is sold by travel bureaus.

The evils attendant upon such operations are so vividly set forth in the opinion of the Interstate Commerce Commission in *Ex Parte No. MC 35*, 33 Motor Carriers Cases 69, and in *Finn* v. *Railroad Commission etc.*, 2 Fed. Supp. 891, that further discussion of such evils is unnecessary.

One of the principal objects of the federal law, in requiring independent brokers to be licensed, is to require that they furnish faithful performance bonds. (Part II, Interstate Commerce Act, Sec. 211 (c), 49 U. S. C. A. Sec. 311 (c).) The prime object of the State statute is to provide like protection to persons dealing with motor carrier transportation agents. (Sec. 8, Stats. 1933, Chap. 390, Page 1014. Appendix, p. 22.)

Assuming that there is some method whereby the operators of travel bureaus may be prosecuted under the Federal Act, such prosecution affords no protection to members of the public defrauded by such agents and carriers. It has been held by the Interstate Commerce Commission in *Ehle Broker Application No. 12268*, 41 Motor Carriers Cases 981, and *Blanford and Lea Broker Application No. 12281*, 43 Motor Carriers Cases 169, and found by the United States District Court in *Drake* v. *United States*, Civil Action No. 4605 (U. S. District Court of Illinois, Northern District, Eastern Division) unreported, that there is no method by which such travel bureaus could be licensed under the Federal Act.

The Appellate Department of the Superior Court has now held that the State cannot license such bureaus.

Although the Federal law declares the policy of Congress to be "to cooperate with the several States and duly author-

ized officials thereof," and the provisions of Section 211 (c), Part II of the Interstate Commerce Act (49 U. S. C. A. Sec. 311 (c), disclose a federal policy of requiring independent transportation agents (brokers) to post faithful performance bonds, the conflicting decisions of the Interstate Commerce Commission and the Appellate Department of the Superior Court have now created in California a "No-Mans Land" where no regulation exists and where bootleggers of interstate commerce may work without let or hindrance, subject only to possible prosecution by the Federal Government, which certainly fails to protect their victims.

It is of the utmost importance to the proper regulation of interstate commerce that this court determine what body has the power to require of such travel bureaus a license and faithful performance bond.

POINT II

The Supreme Court of the United States has not decided the legal effect of the order of the Interstate Commerce Commission in "Exemption of Casual, Occasional, or Reciprocal Transportation of Passengers by Motor Vehicles," Ex Parte No. MC 35.

That the regulation and licensing of persons selling transportation as independent contractors, sometimes called "brokers" and in the California statute herein involved called "Motor Carrier Transportation Agents," come within the police power, is now too well determined to admit of argument. In *California* v. *Thompson,* 313 U. S. 109, this Court sustained the validity of Section 3 of Chapter 390, Statutes of 1933. Subsequent to such decision the Interstate Commerce Commission made its order in *Ex Parte No. MC 35,* 33 Motor Carriers Cases 69, removing casual carriers from the exemption in Part II of the Inter-

state Commerce Act, Section 203 (b) (9) as last amended Sept. 18, 1940, Chap. 722, Title I, Sec. 18, 54 Stats. 919, 920 (49 U. S. C. A. Sec. 303(b)(9), hereinafter cited as Part II, Interstate Commerce Act, Section 203.

The findings of the Commission in *Ex Parte No. MC 35*, are printed herein at page 24, appendix to petition, hereafter cited as "appendix," with appropriate page reference.

Section 3 of the State Act has not been amended, but Section 2 thereof was amended in 1941, by Chap. 539, Stats. 1941, Sec. 2, Page 1861, (appendix p. 21).

We find no cases involving the right of travel bureaus to sell interstate transportation, or the provisions of Part II of the Interstate Commerce Act, Section 203 (49 U. S. C. A. 303) herein involved, or the order of the Interstate Commerce Commission in *Ex Parte No. MC 35*, which have been before this Court since *California* v. *Thompson* (1941), 303 U. S. 109, except *Levin, et al.* v. *United States, et al.*, 319 U. S. 728, and *Duck* v. *Arkansas Corp. Comm.*, 316 U. S. 641, affirming 203 Ark. 488, 158 S. W. (2d) 24.

The per curiam decision of this Court in the *Duck* case, affirming the decision of the Superior Court of Arkansas, and citing *California* v. *Thompson*, 313 U. S. 109, was made shortly after the Interstate Commerce Commission made its order in *Ex Parte No. MC 35*, 33 Motor Carriers Cases 69. The decision of the State court, however, was made before such order of the Interstate Commerce Commission was made. Under the circumstances we cannot say that the court in the *Duck* case passed upon the effect of the order of the Interstate Commerce Commission.

In *Levin v. United States*, 319 U. S. 728, the court affirmed the judgment of the United States District Court of Illinois, Northern District, Eastern Division, in *Drake, et al.* v. *United States, et al.*, Civil Action No. 4605, (un-

reported), dismissing the complaint in such action. The District Court in its conclusions of law in the *Drake* case, *supra,* found that the Commission did not, by its order in *Ex Parte No. MC 35, supra,* provide for regulation of travel bureaus (appendix, p. 28, Conclusion No. 4). The Appellate Department of the Superior Court in the instant (Edmondson) case held that the per curiam affirmance by the United States Supreme Court of the judgment of the District Court did not necessarily constitute an affirmance of the findings of the District Court (R. 12, appendix p. 34). It also refused to follow the findings of the District Court (R. 13, appendix p. 35).

It thus appears that the United States Supreme Court has never passed upon the question of what, if any, effect the order of the Interstate Commerce Commission has upon the power of the State to regulate the activities of travel bureaus who sell transportation for carriage by casual carriers.

Point III

There is no method provided by Federal law for licensing of persons selling interstate transportation over carriers who do not have certificates of convenience and necessity.

The Interstate Commerce Commission has held that there is no provision for issuing a broker's license to a person, hereinafter referred to as a travel bureau, if such person sells or intends to sell transportation over carriers engaged in interstate transportation of passengers without having a certificate of convenience and necessity from the Commission, herein called casual carriers.

Blanford and Lea Broker Application No. 12281, 43 Motor Carriers Cases 947;

Ehle Broker Application No. 12268, 41 Motor Carriers Cases 981.

The District Court of the United States held that the order of the Interstate Commerce Commission in *Ex Parte No. MC 35,* 33 Motor Carriers Cases 69, did not attempt to provide any regulation of travel bureaus.

Drake v. *U. S.,* Civil No. 4605, (U. S. D. C. Ill.), Appendix p. 38, Finding No. 4. (Judgment affirmed, *Levin* v. *U. S.,* 319 U. S. 728.)

Point IV

The State law grants a permit to sell transportation over State highways only, and does not grant or purport to grant a permit to violate Federal statutes.

Section 2 of the California statute (Chap. 390, Stats. 1933, P. 1011, as amended, appendix p. 20) was entirely recast in 1941. The particular change pertinent to this case is in the last paragraph of such section which, prior to 1941, read as follows:

> "The provisions of this act shall apply regardless of whether such transportation so sold, or offered to be sold, is interstate or intrastate."

The second paragraph of such Section 2 (appendix p. 20) was amended to exclude from the definition of motor carriers, carriers having certificates of convenience and necessity, thereby eliminating from regulation under the State statutes persons selling transportation over a carrier who had in fact subjected himself to regulation under the Federal law. Such statute only licenses the sale of transportation over highways of the State of California. There is nothing in the statute which can be construed as an attempt to license transportation in interstate commerce.

Considering the fact that such section excludes from the definition of motor carriers all carriers having certificates of convenience and necessity from the Interstate Commerce Commission, it appears plain that the legislature intended,

by the provisions of the last paragraph of such Section 2, to make the statute effective as to all persons who sold interstate transportation over carriers who did not comply with the Federal law by securing a certificate from the Interstate Commerce Commission. The legislative intent was that, if the Interstate Commerce Commission could, and in the future did, proceed to license agents to sell interstate transportation over non-certificated carriers, such agents would be exempt from licensing under the State law. The State Act now fills a gap in the matter of regulation not then or now occupied by Federal law or regulation.

POINT V

A "Casual Carrier" Transporting Passengers on Transportation sold by a travel bureau does not thereby become a lawful carrier of interstate commerce.

A non-certificated carrier does not engage in interstate commerce until he carries passengers beyond the state line. (Interstate Commerce Act, Part II, Sec. 203, subsec. (a), item 10 (49 U. S. C. A. Sec. 303(a)(10).)

When a casual carrier, carrying passengers to whom transportation was sold by a travel bureau, crosses a state line, he is removed from the exemption but does not thereby become a certificated or lawful carrier of interstate commerce. He becomes an unlawful operator and subject to any appropriate penal provisions of the Interstate Commerce Act, or to having his operations stopped by injunction proceedings. There is nothing in the State statute under consideration which authorizes or purports to permit such carrier to operate in violation of either state or federal laws. The bond required by Section 8 of the State statute (appendix p. 22) affords a measure of protection, however, to persons purchasing transportation from agents who attempt to utilize unlawful operators of motor vehicles in the conduct of their business.

Point VI

Section 3 of Chapter 390, Statutes of 1933, page 1011, is not in conflict with Federal law.

In *California* v. *Thompson*, 313 U. S. 109, 114, this court pointed out that the State statute does not prohibit or obstruct the flow of interstate traffic. It also stated at page 115 that the matter of regulation of such agents was peculiarly a matter of local concern.

With respect to the exercise of the police power by the states, this Court has held that statutes which,

Do not stand as an obstacle to the accomplishment and execution of the full purposes of Congress (*Hines* v. *Davidowitz*, 312 U. S. 52, 67; *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, 157);

Do not constitute an undue burden upon interstate commerce (*Nippert* v. *Richmond* (decided Feb. 25, 1946) — U. S. — (90 L. Ed. (Adv. Sheets), 496));

Or only incidentally or indirectly affect interstate commerce (*California* v. *Thompson*, 313 U. S. 109, 113; *Milk Control Board, etc.* v. *Eisenberg Farm Products*, 306 U. S. 346, 351; *Hartford Acc't & Indem. Co.* v. *Illinois*, 298 U. S. 155, 158)

do not constitute such conflict with the power of Congress as to render a State law invalid, at least in the absence of Federal legislation fully covering the matter.

There may be local regulations of interstate commerce which tend to coincide with the policy of the Federal Government.

Parker v. *Brown*, 317 U. S. 341, 363.

As a matter of statutory construction Congressional intention to displace local laws in the exercise of its com-

merce power is not, in general, to be inferred unless clearly indicated by those considerations which are persuasive of the statutory purpose.

Mauer v. *Hamilton*, 309 U. S. 598, 614.

Exercise by the State of its police power, which would be valid if not superseded by Federal action, is superseded only where the repugnance or conflict is so direct and positive that the two acts cannot be reconciled or consistently stand together.

Kelly v. *Washington*, 302 U. S. 1, 10.

The licensing provisions of the State law, so far as interstate commerce is concerned, are limited to what are in fact "bootleggers of interstate commerce."

If the Interstate Commerce Commission and the United States District Court be correct in their respective decisions, heretofore cited, there is no method provided for licensing agents who sell transportation by such casual carriers. The provisions of the State law do not interfere with the movement of persons upon transportation so sold as they may proceed upon their journey unless interrupted by Federal law enforcement authorities, in which case such interruption is not the result of enforcement of the State statute but of enforcement of Federal law.

Point VII

Administration of the State statute will aid in the enforcement of the Federal law rather than interfere with such enforcement.

By reason of the order of the Interstate Commerce Commission in *Ex Parte No. MC 35*, 33 Motor Carriers Cases 69, a casual carrier, who carries passengers to whom transportation was sold by travel bureaus, operates in violation

of the Federal law because he operates without a certificate of convenience and necessity (Interstate Commerce Act, Part II, Sec. 206(a), 49 U. S. C. A., Sec. 306(a)). If he secures such certificate it appears that he is no longer a casual carrier, but irrespective of whether that be so, immediately upon his securing such certificate from the Interstate Commerce Commission, persons who sell transportation over such carrier are not motor carrier transportation agents.

California Stats. 1933, Chap. 390, Sec. 2, P. 1012, as amended by Stats. 1941, Chap. 539, Sec. 2, P. 1861. (Appendix, p. 20).

In its opinion in that matter the Commission pointed out the difficulties which attend any attempt to determine which casual carriers are "regulars" in the business. The order of the Commission has not rendered detection of casual carriers any less difficult. Manifestly the officers of the Commission cannot stop all, or any considerable number, of private cars for the purpose of ascertaining whether the occupants are paying passengers. Equally obvious is the fact that, as to such cars as are stopped and found to be carrying passengers, the officer could in but few if any instances ascertain whether transportation was sold by a person (travel bureau) engaged in the business of selling such transportation.

The State statute requires that licensed agents keep certain records (Stats. 1933, Chap. 390, Sec. 11, P. 1015 (Appendix, p. 23)). Such records are open to inspection by state, county and city officials. We can safely assume that federal agents can secure cooperation by state agencies and thereby secure information which will materially aid in enforcement of the Federal law.

Point VIII

The State law tends to carry out the policy of the Federal Government.

Part II of the Interstate Commerce Act, Sec. 211(b) (U. S. C. A., Title 49, Sec. 311(b)) requires that brokers shall furnish faithful performance bonds. California Statutes of 1933, Chap. 390, Sec. 8, P. 1014, as amended by Stats. 1941, Chap. 539, Sec. 5, P. 1863 (appendix, p. 22), likewise provides that motor carrier transportation agents shall furnish similar bonds.

The policy of the State government, like that of the Federal government, is to require that those who, as independent contractors, sell transportation, protect the interests of those with whom they deal by insuring such persons against loss by default of carrier. Thus the State policy coincides with a policy which Congress has established (*Parker* v. *Brown,* 317 U. S. 341, 363).

Point IX

The State could prohibit any person from selling transportation for carriage by other than certificated carriers, and that which it may prohibit it may permit under reasonable regulation.

Part II of the Interstate Commerce Act, Section 311(a), prohibits the sale of interstate transportation subject to the Act unless such transportation is to be carried by certificated carriers. The State could adopt the same policy and prohibit the sale of transportation to be carried by persons other than certificated carriers. The State has seen fit to regulate rather than prohibit the sale of tickets for transportation by casual carriers over the State highways, but it does not by so doing authorize the licensee to engage in interstate commerce in violation of Federal law.

A travel bureau is not engaged in interstate commerce but is at most, when he sells interstate transportation, an instrument used in interstate commerce, and the power of regulating instruments of interstate commerce, so long as such regulation does not interfere with the proper exercise of Federal power, remains with the States.

Louisville & N. R. Co. v. *Kentucky*, 161 U. S. 677, 702.

POINT X

A single act may constitute an offense against both Federal and State laws.

The sale by travel bureaus of transportation by casual carriers over the highways of the State without having a license so to do is a penal offense. (Sec. 16, Chap. 390, Stats. 1933, P. 1016.) If the casual carrier transports across a state line a passenger to whom transportation was sold by a travel bureau, the carrier may be punished under Federal law (Interstate Commerce Act, Part II, Sec. 222(a), 49 U. S. C. A. 322(a)), and the travel bureau is also probably punishable under the Federal law. (Interstate Commerce Act, Part II, Sec. 222(a), 49 U. S. C. A. 322(a).)

Where an act is forbidden by both Federal and State law, each designed to establish and enforce the same general object of public policy, the same act may constitute separate offenses punishable by both State and Federal jurisdiction.

U. S. v. *Lanza*, 250 U. S. 377, 382;
Westfall v. *U. S.*, 274 U. S. 256, 258.

The case of *Southern R. Co.* v. *Railroad Comm.*, 236 U. S. 439, cited by the Appellate Department of the Superior Court (R. 13, appendix p. 35) is inapposite for the reason that the law involved in that case directly and substantially burdened interstate commerce.

Manifestly, if the State undertook to license that which the Federal Government has prohibited, as licensing the sale of intoxicating liquor when the Federal prohibition law (Volstead Act) was in force, there would have been such a conflict as to have rendered the State law invalid. Such situation does not exist with respect to the statutes involved in the instant case.

Conclusion

By reason of the decision of the Appellate Department of the Superior Court, which is not only not in harmony with the decisions of this Court herein cited, but is also at variance with the opinions of the Interstate Commerce Commission and the United States District Court, there exists such confusion concerning the proper authority to regulate operators of travel bureaus that it is now impossible to control or prohibit the horde of such operators who are preying upon the public generally and upon discharged members of the armed forces in particular. It is respectfully submitted that, not only in the interests of the general welfare but also in order that the policy of Congress should be carried out with respect to interstate transportation, a writ of certiorari should be granted in order that this Honorable Court may review the judgment of the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, and reverse such judgment.

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